SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Runner & Cardoza | Analyst: Marion Mann DeJong | Bill Number: AB 2461

Related Bills: See Prior Analysis | Telephone: 845-6979 | Amended Date: 05/17/2000

Attorney: Patrick Kusiak | Sponsor:

SUBJECT: MIC/Change from 6% to 8%/Extend to Mineral Extraction & Certain Electric Power Generator Activities/Delete Repeal Date to Extend Indefinitely

X DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as amended April 24, 2000.

____ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

____ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _________.

____ FURTHER AMENDMENTS NECESSARY.

____ DEPARTMENT POSITION CHANGED TO _________________________.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED April 24, 2000, STILL APPLIES.

____ OTHER - See comments below.

SUMMARY OF BILL

This bill would make the following changes to the Manufacturers' Investment Credit (MIC):

- increase the credit from 6% to 8% of qualified costs,
- extend the MIC to taxpayers engaged in extracting nonmetallic minerals,
- extend the MIC to specified taxpayers engaged in electric services,
- expand the current definition of qualified activity to include extracting and generating of electricity,
- expand the definition of when manufacturing or other processes commence and conclude, and
- delete the repeal date.

SUMMARY OF AMENDMENT

The May 17, 2000, amendments modified the language in the Bank and Corporation Tax Law (B&CTL) that explicitly excludes equipment used in the extraction process from the definition of qualified property to include equipment used for specified extraction processes. This change had inadvertently been omitted when a corresponding change was made to the Personal Income Tax Law in the April 24, 2000, amendment. The May 17, 2000, amendment resolved one implementation consideration. The amendment did not impact the revenue estimate since it was assumed for the prior estimate that the author would make a corresponding change under the B&CTL.

The analysis of the bill as amended April 24, 2000, still applies. The "Policy Considerations," remaining "Implementation Considerations" and "Board Position" are reiterated below. In addition, a new technical consideration is raised.

Board Position:			Legislative Director	Date
____ S	____ NA	____ NP		
____ SA	____ O	____ NAR	Johnnie Lou Rosas	6/5/00
____ N	____ OUA	X PENDING		

POLICY CONSIDERATIONS

This bill would raise the following policy considerations.

- This bill would benefit transactions for which binding contracts already exist and would not be limited to benefit only future business decisions. Contracts entered into after January 1, 1994, but prior to enactment of this bill, already qualify for the credit, and existing binding contracts that require the payment of otherwise qualified costs under the MIC would qualify for the increased MIC benefit (additional 2%) provided under this bill.

- The bill would amend the qualified activity definition within the qualified property definition by expanding the "process" (manufacturing, processing, refining, etc.) to include "the point at which any raw materials are obtained." Because this change is not limited to the extractive activities added by this bill, it would allow existing qualified taxpayers to claim the MIC for equipment used to transport raw materials from the point that they are obtained (for example, a warehouse owned by the taxpayer) to the actual manufacturing, fabricating, etc., site. Under current law, such equipment would not qualify for the MIC because the MIC is limited to equipment use beginning at the point raw materials are "received." Further, if the term "obtained" were construed to mean the point at which title transfers, then a taxpayer that transported raw materials by trucks that it owned or leased, regardless of distance, would be entitled to claim the MIC for the costs of the trucks. Under current law the trucks would not qualify since they would not be treated as equipment used in the "process" qualifying the taxpayer for the MIC.

IMPLEMENTATION CONSIDERATIONS

Under current law, the definition of qualified property includes tangible personal property used for specified activities, beginning with the point raw materials are added to the process and *ending at the point the activity has altered tangible personal property to its completed form, including packaging, if required*. This bill would add “extracting” to the list of activities that define the end of the “process.”

However, it is unclear whether extractive activities could ever result in the altering of tangible personal property to its completed form and thus the definition may not properly address extractive activities. This could result in some extractive industry taxpayers not being entitled to the MIC as intended by this bill. This could result in disputes between taxpayers and the department.

TECHNICAL CONSIDERATION

Amendments 1 and 2 would replace incorrect SIC codes. There is no SIC code 1400; extracting nonmetallic minerals begins at SIC code 1411 not 1400.

BOARD POSITION

Pending.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 2461
As Amended May 17, 2000

AMENDMENT 1

On page 9, line 3, strikeout "1400" and insert:

1411

AMENDMENT 2

On page 21, line 40, strikeout "1400" and insert:

1411